



FR-4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 34554 (Sub-No. 17)]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF
Railway Company

AGENCY: Surface Transportation Board.

ACTION: Partial Revocation of Exemption.

SUMMARY: Under 49 U.S.C. § 10502, the Board revokes the class exemption as it pertains to the trackage rights described in Docket No. FD 34554 (Sub-No. 16)¹ to permit the trackage rights to expire on or about December 31, 2012, in accordance with the agreement of the parties,² subject to the employee protective conditions set forth in

¹ In that docket, on August 16, 2012, Union Pacific Railroad Company (UP) filed a verified notice of exemption under the Board's class exemption procedures at 49 C.F.R. § 1180.2(d)(7). The notice covered the agreement by BNSF Railway Company (BNSF) to extend to December 31, 2012, the expiration date of the local trackage rights granted to Union Pacific Railroad Company (UP) over BNSF's line of railroad between BNSF mileposts 579.3 near Mill Creek, Okla., and 631.1 near Joe Junction, Tex., a distance of approximately 51 miles. UP submits that, while the trackage rights are only temporary rights, because they are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights under 49 C.F.R. § 1180.2(d)(8). See Union Pac. R.R.—Temporary Trackage Rights Exemption—BNSF Ry., FD 34554 (Sub-No. 16) (STB served Aug. 31, 2012).

² The trackage rights were originally granted in Union Pacific Railroad Company—Temporary Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company, FD 34554 (STB served Oct. 7, 2004). Subsequently, the parties filed several notices of exemption based on their agreements to extend expiration dates of the same trackage rights. See FD 34554 (Sub-No. 2) (STB served Feb. 11, 2005); FD 34554 (Sub-No. 4) (STB served Mar. 3, 2006); FD 34554 (Sub-No. 6) (STB served Jan. 12, 2007); FD 34554 (Sub-No. 8) (STB served Jan. 4, 2008); FD 34554 (Sub-No. 10) (STB served Jan. 8, 2009); FD 34554 (Sub-No. 12) (STB served Dec. 31, 2009); and FD 34554 (Sub-No. 14) (STB served Feb. 11, 2011). Because the original and subsequent

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Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho, 360 I.C.C. 91 (1979).

DATES: This decision is effective on December 14, 2012. Petitions to stay must be filed by November 26, 2012. Petitions for reconsideration must be filed by December 4, 2012.

ADDRESSES: Send an original and 10 copies of all pleadings, referring to Docket No.

FD 34554 (Sub-No. 17) to: Surface Transportation Board, 395 E Street, S.W.,

Washington, D.C. 20423-0001. In addition, a copy of each pleading must be served on

UP's representative: Elisa B. Davies, 1400 Douglas Street, Mail Stop 1580, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Marc Lerner (202) 245-0390.

[Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.]

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trackage rights notices were filed under the class exemption at 49 C.F.R. § 1180.2(d)(7), under which trackage rights normally remain effective indefinitely, in each instance the Board granted partial revocation of the class exemption to permit the authorized trackage rights to expire. See FD 34554 (Sub-No. 1) (STB served Nov. 24, 2004); FD 34554 (Sub-No. 3) (STB served Mar. 25, 2005); FD 34554 (Sub-No. 5) (STB served Mar. 23, 2006); FD 34554 (Sub-No. 7) (STB served Mar. 13, 2007); FD 34554 (Sub-No. 9) (STB served Mar. 20, 2008); FD 34554 (Sub-No. 11) (STB served Mar. 11, 2009); FD 34554 (Sub-No. 13) (STB served Mar. 15, 2010); and FD 34554 (Sub-No. 15) (STB served Apr. 15, 2011). At the time of the extension authorized in Docket No. FD 34554 (Sub-No. 14), the parties anticipated that the authority to allow the rights to expire would be exercised by December 18, 2011. On August 16, 2012, in Docket No. FD 34554 (Sub-No. 16), UP filed its most recent notice of exemption seeking Board authority for temporary trackage rights covering the parties' latest agreement—September 15, 2012 to December 31, 2012. In Docket No. FD 34554 (Sub-No. 17), UP filed a petition to partially revoke the class exemption to permit expiration of those trackage rights, which we are addressing here.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Board decisions and notices are available on our website at <http://www.stb.dot.gov>.

Decided: November 8, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Derrick A. Gardner

Clearance Clerk

[FR Doc. 2012-27638 Filed 11/13/2012 at 8:45 am; Publication Date: 11/14/2012]